

351.184 Office to notify applicant of test results when granting or denying certification -- Retesting after denial -- Evaluation and treatment -- Right of appeal.

- (1) The results of any testing performed by the Office of Mine Safety and Licensing shall be given to the applicant at the time of his or her notification of the granting or denial of certification.
- (2) Certification of an applicant shall be denied if any one (1) or more of the following occur:
 - (a) The applicant's positive drug test results for any of the eleven (11) substances listed in KRS 351.182(8) are deemed to fail by a medical review officer;
 - (b) The applicant's blood alcohol level is above .04 concentration at the time of testing;
 - (c) The applicant's test results demonstrate the submission of an adulterated specimen; or
 - (d) The applicant refuses to submit to a drug or alcohol test as required by KRS 351.182.
- (3) Any applicant who is denied certification due to the results of the drug and alcohol testing required by KRS 351.182 may be retested again, at his or her expense, within ten (10) days of notification of the results of the initial test.
- (4) If an applicant fails a drug and alcohol retest as provided in subsection (3) of this section and the applicant is denied certification, the applicant may reapply for certification only after an evaluation by a medical professional trained in substance abuse treatment and the successful completion of prescribed treatment and an acceptable result from a drug and alcohol test as required by KRS 351.182. Proof of the evaluation and the successful completion of the prescribed treatment shall be shown at the time of application.
- (5) Any applicant who is denied certification due to the results of the drug and alcohol testing required by KRS 351.182 may file an appeal of the denial with the Mine Safety Review Commission within thirty (30) days of the notification of the results of the test.

Effective: July 12, 2006

History: Created 2006 Ky. Acts ch. 241, sec. 4, effective July 12, 2006.

Legislative Research Commission Note (7/12/2006). 2006 Ky. Acts ch. 241, sec. 4, subsec. (2)(b), provides that certification shall be denied if "[t]he applicant's blood alcohol level is above four tenths of one percent (.04) concentration at the time of test." The words "four tenths of one percent" and the parentheses around ".04" were removed during codification to correct a manifest clerical error that occurred in the drafting process. Materials in the bill folder for House Bill 572 (which became 2006 Ky. Acts ch. 241) show that the bill was drafted to be an exact copy of a bill requested and later introduced as Senate Bill 201, the initial proposed draft of which provided for denial of certification if "[t]he applicant's blood alcohol level is above .04 concentration at the time of testing." Materials in the bill folder for Senate Bill 201 indicate that the erroneous phrase was inserted during the drafting process to conform with the rules for cardinal numbers set forth in the Bill Drafting Manual of

the Kentucky General Assembly. The Reviser of Statutes has made this correction under the authority of KRS 7.136(1).